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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th September 2011

No. 7999-li/1(J)-22/2007-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th July 2009 in I. D. Case No. 1 of 2008 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Managing Director, Sreema Seeds Pvt. Ltd., Madhupatna, Cuttack and their Workman Shri Sona Murali was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 1 OF 2008

Dated the 27th July 2009

Present :

Shri P. K. Jena, O.S.J.S. (Jr. Branch),
Presiding Officer,
Labour Court, Jeypore,
Dist. Koraput.

Between :

The Managing Director,
Sreema Seeds Pvt. Ltd., Madhupatna,
At/P.O. Kalyaninagar,
Dist. Cuttack.

. . . First-party—Management

Versus

Its Workman
Shri Sona Murali,
S/o S. Rama Rao,
Maharanipeta,
At/P.O. Jeypore,
Dist. Koraput.

. . . Second-party—Workman

Under Section 10 and 12 of the Industrial Disputes Act, 1947

Appearances :

Shri Niranjan Nayak A/R of M/s Sreema Seeds Pvt. Ltd., Cuttack.	..	For First-party—Management
Self	..	For Second-party—Workman
Date of Argument	..	7-7-2009
Date of Award	..	27-7-2009

AWARD

1. The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 14004(5)-L.E., dated the 24th December, 2007 for adjudication of the following disputes :—

SCHEDULE

"Whether the action of the management of M/s Sreema Seeds Pvt. Ltd., Cuttack in terminating the services of Shri Sona Murali, Ex-Branch in-charge with effect from the 16th December 1996 is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. The short case of the second-party workman Shri Sona Murali is that he was working as an employee under the first-party management since 8-7-1992. As per pleadings of the workman he joined in his duty under the first-party management on 8-7-1992 and discharging his duties to the satisfaction of the management vide letter of appointment given to him by the first-party management. In that letter of appointment issued by the first-party management in favour of the second-party workman and in that letter of appointment it was reflected that the workman is entitled to get consolidated salary of Rs. 36,000 (Rupees thirty-six thousand) only per annum excluding the travelling expenses and other conditions were also reflected in that appointment letter. As per the pleadings of the workman, the first-party management assured the second-party workman to get his salary after four to five years. During the tenure of his service he was appointed as a Branch in-charge by the M.D., M/s Sreema Seeds Pvt. Ltd., Cuttack vide letter No. 8792 and joined in his duty at Jeypore Branch to deal with sale of seeds and used to receive stocks and to sale seeds to Government and Private Agencies and to collect the sale proceeds of the same. He further contended that he used to send the amount collected through sale proceeds to the management directly by Demand Draft and in some occasions handed over the cash to Managing Director or his representative while he used to visit Jeypore Branch. When he was discharging his duty to satisfaction of his authority all of a sudden the management over telephone on 16-12-1996, terminated his service without complying the provisions of the I. D. Act, 1947. As per the pleadings of the workman, the management should have served notice to him and ought to have paid compensation money to him. But the management has arbitrarily and without any reason terminated his service. Thereafter the workman complained the matter before the Conciliation Officer-*cum*-District Labour Officer, Jeypore. After failure of the conciliation the matter was referred for adjudication.

3. On the other hand, the first-party management filed his W.S. by denying the averments of the claim statement to be true and correct in all respects. According to the management the complaint petition made by the second-party workman is not maintainable and required to be

dismissed. It is further contended that the management not being an Industry and accordingly the second-party workman not being a workman under the first-party management, so the present dispute is not maintainable. As per pleadings of the first-party management since the engagement of the second-party workman is under contractual basis and temporarily nature so there is no necessity to comply the provision under Section 25-F of the I. D. Act, 1947. So also there is no need of issue a show-cause notice to the workman. According to the management on the request of the second-party workman it was decided that a Branch will be opened at Jeypore and will be managed by the second-party workman as a Branch in-Charge and lump sum of Rs. 36,000 per annum will be paid to the workman on contractual basis between the first-party management and the second-party workman. As per the contention of the first-party management since the workman drawing wages exceeding Rs. 1,600 per month so he is not coming under the definition of the workman under Section 2(s) of the I. D. Act and therefore the case is not maintainable. As per the pleadings of the management since the business was made loss by the second-party workman, the first-party management cancelled the contract made with the second-party workman and intimated through a letter vide Dt. 31-3-1995 which was acknowledged by the second-party workman and therefore the contract between the first-party management and the second-party workman came to an end. In that letter, second-party workman was directed to settle the dues within a month. But without doing anything the second-party workman files complaint petition before different authorities. After lapse of 8 (eight) years and on the point of the limitation the said case is not maintainable. Hence, the termination of the service of Shri Sona Murali, Branch in-Charge is legal and justified.

4. The workman Sona Murali in support of his case has examined three (3) witnesses including himself as W.W. 1. The W.W. 2 and W.W. 3 are the neighbouring shop-keepers of the workman who support the contention of the workman. The workman has filed several documents in support of his case under Ext. 1 to Ext. 5. Similarly, the management has filed an affidavit evidence through his representative namely one Niranjan Nayak working as Marketing Executive, M/s Sreema Seeds Pvt. Ltd., Madhupatna, Cuttack as M.W. 1. The management in support of his case filed concerned documents under Ext. A to Ext. C.

5. As per the reference the first point to be determined whether the second-party workman Sona Murali was working under M/s Sreema Seeds Pvt. Ltd., Cuttack and he was in-charge of Jeypore Branch and whether his termination from the service by the management with effect from the 16th December 1996 is legal or justified and if not, then what relief he is entitled ?

6. It is admitted, but not disputed that the workman Sona Murali was working under the first-party management, namely M/s Sreema Seeds Pvt. Ltd. at Cuttack, Branch at Jeypore. As per the evidence of the M.W. 1 he was appointed to work in Jeypore Branch since 8-7-1992 and according to him Sreema Seeds Pvt. Ltd., agreed to give him Rs. 36,000 per annum towards salary. It is admitted by him that during the month of November 1992 he took advance of Rs. 10,000 from Sreema Seeds Pvt. Ltd., Cuttack and he worked under the said management till 12/1996. According to the workman during that period, he has not received any salary from the management except getting advance of Rs. 10,000. Being called by the M.D. he had gone to Cuttack several times to get back salary but the first-party management did not pay his salary. According to him during tenure of his service at Jeypore by selling seeds he collected near about one crore and deposited the same before the management at Cuttack. As per his evidence he is entitled to get Rs. 1,49,800 towards his salary from the management. But the management stopped his work since 1996 without giving any notice in writing nor paid him any retrenchment compensation. He prays the Court to reinstate him in his previous service along with back wages. The other witnesses namely W.W. 2 and

W.W. 3 corroborate the evidence of the workman regarding his employment under the first-party management, Branch at Jeypore. According to W.W. 2 the workman Sona Murali was selling seeds to different persons and after five (5) to six (6) years that seeds shop was closed. But he cannot say why the seeds shop was closed. In course of cross examination he stated that now the workman is an unemployed person. Similarly W.W. 3 states that the workman was working as a Branch Manager in Jeypore Branch of Sreema Seeds Pvt. Ltd. According to him the said Jeypore Branch was functioning since 1992 at Jeypore and closed near about 1996. So this witness proves the tenure of the service of the workman under Jeypore Branch from 1992 to 1996. The appointment letter under Ext. A clearly shows that worker Sona Murali was a regular employee appointed as a Branch in-Charge of Jeypore Branch under M/s Sreema Seeds Pvt. Ltd., Cuttack. The appointment letter under Ext. A clearly shows that the workman was appointed under the management with a consolidated salary of Rs. 36,000 per annum. As per counter filed by the management since the business was made loss by the workman, so the first-party management cancelled contract made with second-party workman and intimated to him through a letter vide, Dt. 31-3-1995 duly acknowledged by the second-party workman for which the contract between the first-party management and second-party workman came to an end. Ext. C filed by the management shows that the Branch opened at Jeypore was closed on the 31st March 1995 due to loss of Jeypore Branch. The said Ext. shows that, Rs. 6,51,230.58 ps. was outstanding against the workman from 1992 to 1995 and in that letter it has been reflected that the authorisation given to the workman as a Branch-in-charge was hereby cancelled. On the other hand the workman in course of his argument denied to have received such letter under Ext. C. According to him the signature has been forged by the management under Ext. C. The workman claimed that all on a sudden, the first-party management over telephone on 16-12-1996, terminated his service. On perusal of Ext. C compared with the signature of the workman Sona Murali in his claim statement as well as in his deposition, dated the 5th January 2009 before the Court, it is clearly found that the name of the workman has been forged by the management and signed by some other person other than the workman Sona Murali. In the claim statement as well as in the deposition the workman has signed his name as Sona Murali whereas Ext. C filed by the management as well as Ext. 5 filed by the workman shows, the signature of the workman as Mulari Suna, which do not tally with the signature of workman in his claim statement as well as in his deposition given before the Court. Even though the management closed Jeypore Branch on the 31st March 1995 under Ext. C but the said closure of shop has not been properly communicated to the workman Sona Murali in due time. In view of such forge signature in the name of the workman Sona Murali find place in Ext. C (Ext. 5) it is clearly established that the workman was continuing in that Jeypore Branch till 12/1996 which is supported by the claim statement of the workman. The deposition given by the workman fully corroborates to his claim statement regarding his continuance of his service in that Jeypore Branch till 16-12-1996 when he was intimated regarding his termination of service by the first-party management.

7. On perusal of the pleadings of the both parties as well as on perusal of the evidence of the both parties it is crystal clear that before termination, the management has not followed the mandatory provision provided under Section 25-F of the I. D. Act, at the time of termination. Even though the management claimed that he has communicated the letter to the workman regarding closure of the Jeypore Branch since 31-3-1995 with acknowledge and signature of the workman, but the said information has not been properly communicated to the workman, rather the signature in the name of the workman Murali Suna has been signed by some other person other than the workman. So the signature found place under Ext. C in the name of the workman is a false one done by the management. Before terminating the service of the workman, the management ought to have served one month notice and to pay the compensation amount, i.e. 15 days pay for year of

service. In this instant case the management has not complied the provision of the I. D. Act before terminating the service of the workman, either by telephonic message on 16-12-1996 or as per Ext. C, if it is believable.

8. Ext. 2 filed by the workman shows that Rs. 4,60,841.58 ps. was out standing against the workman. Out of which workman has paid Rs. 4,33,000 to the management as reveals from Ext. 1. The management during his cross examination has also admitted the said fact under Ext. 1. In token of receipt of demand draft of Rs. 4,28,539, Dt. 14-5-1995 and admitted his signature as Ext. 1/1. Further management has admitted that M.D. came to Jeypore and received Rs. 10,000 from Jeypore Branch through the workman and also receipt Cheque Nos. 968004 and 968003 of Andhra Bank under Ext. 3 and granted receipt to have received the same. So as per calculation, it is found that the workman has already paid Rs. 4,43,539 to the management out of pending Rs. 4,60,841.58 ps. outstanding against him. M.W. 1 has proved the signature of the M.D. in that Ext. 3 as Ext. 3/1. During suggestion by the workman, the management has dmitted to have received Rs. 4,43,539 in toto. along with two (2) other Cheques of Andhra Bank, Dt. 3-5-1995 from the workman out of Rs. 6,51,230.58 ps. Although the management claims his outstanding dues of Rs. 6,51,230.58 ps. from the workman for the period from 1992 to 1995 but after perusal of several documents and filing of Ext. 2 by the workman under the seal and signature of the management, it is clearly revealed that the workman has already paid Rs. 4,43,539 out of Rs. 4,60,841. This statement given by the management coupled with Ext. C, regarding outstanding dues Rs. 6,51,230 for the period from 1992 to 1995 appears to be incorrect, after comparing the outstanding dues under Ext. 2. But on the other hand, the management could not be able to prove or filed any documentary evidence before the Court regarding regular payment of salary to the workman for the period from 1992 to 1996, except proving the advance of Rs. 10,000 taken by the workman. Since the workman has already paid Rs. 4,43,539 out of Rs. 4,60,841, so he is to pay the rest balance amount to the management. On the other hand the workman is also entitled to get his salary from the management from his joining till his retrenchment from service, i.e. till 1996, after adjusting advance of money Rs. 10,000 from his salary. On the above controvers it can be clarified in detail at the time of computation filed by the workman.

9. In course of argument, the management vehemently objected the maintainability of this case in favour of workman on the point of limitation at the workman has filed this case after delay of seven (7) to eight (8) years. In this aspect the management has relied on decision in 1996 Lab. I.C. page 45 in case of "Balbanth Singh Vrs. Labour Court, Vatinda and others" in which it is held that "belated claim—order of termination challenged after lapse of five (5) years—no explanation for delay offered—Labour Court has jurisdiction to decline relief."

10. But on the other hand the workman in support of his case relies on decision in 2008 Lab. I.C. page 474 (S.C.) on the point of limitation in which it has been held that no formula of universal application can be laid down—it would depend on facts of each individual case. So in view of the relied decision filed by the workman in 2008 Lab. I.C. (S.C.) the above decision filed by the management is not applicable.

11. Further the management relied on several decisions by stating that the management is not an Industry and his employee is not at all a worker under him as per the Industrial Disputes Act.

12. Whether the first-party management is an Industry or not Industry means any systematic activity carried on by co-operation between an employer and his workman (whether such workman are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature). In view of such definition it is clear that the first-party management is an Industry. The fact and circumstance of relied decision

filed by the management quite different from the facts and circumstances of the present case. In this instant case the appointment letter issued by the management itself speaks that the second-party workman is a regular employee under the first-party management and it cannot be said that the appointment is said to be contractual and temporary. Further Section 2 (s) of the I. D. Act, clearly defines the employee as a workman serving under the first-party management and the appointment letter given in favour of the Sona Murali clearly establish that he was a regular employee working under the first-party management and he is entitled to get salary from the management Rs. 36,000 (Rupees thirty-six thousand) only per annum as a workman towards his salary as per appointment letter.

13. On perusal of pleadings of both parties and considering the oral as well as documentary evidence filed by the both parties it is concluded that the action of the management of M/s Sreema Seeds Pvt. Ltd., Cuttack in terminating the service of Shri Sona Murali ex-Branch-in-Charge of Jeypore with effect from the 16th December 1996 is illegal and unjustified. Hence order.

ORDER

In view of the above observation and taking into consideration of both oral and documentary evidence it is crystal clear that the management has not complied the provision of Section 25-F of the I.D. Act, before terminating the service of the workman. In the result the management is directed to reinstate the workman Shri Sona Murali in his former post in any of his Branch with full back wages within three months of this Award, failing which the workman is at liberty to take shelter in the appropriate authority for taking the said relief.

Dictated and corrected by me.

P. K. JENA
27-7-2009
Presiding Officer
Labour Court, Jeypore

P. K. JENA
27-7-2009
Presiding Officer
Labour Court, Jeypore

By order of the Governor

T. K. PANDA

Under-Secretary to Government
